

**REMARKS**

Applicants have thoroughly considered the Examiner's remarks in the October 19, 2007 Office action. Applicants have amended claims 1, 17, and 32 in this Amendment A for clarity.

Applicants respectfully request reconsideration of the claims as amended and in view of the following remarks. In particular, the cited art is directed to reconfiguring existing resources on an individual customer basis and **does not teach adjusting the total network capacity**. Further, Applicants submit that the finality of any subsequent Office Action would be premature due to the complete absence of some of the claimed limitations from the cited art as described herein. If the Examiner deems the application as amended to not be in condition for allowance, the Examiner is invited and encouraged to telephone the undersigned to discuss advancing prosecution of the present application.

Applicants request that the Examiner review and approve the drawings on file.

**I. Rejection of Claims 17-31 Under 35 U.S.C. 101**

Claims 17-31 stand rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. Applicants respectfully disagree. However Claim 17 has been amended to recite "said system comprising a processor configured to execute computer-executable instructions". Accordingly, Claim 17 is submitted as being patentable.

Claims 18-31 depend from and further limit claim 1, and are submitted as being patentable for at least these reasons.

Accordingly, Applicants request that the rejection of these claims be removed.

## **II. Rejection of Claims 1-41 Under 35 U.S.C. 102(b)**

Claims 1-41 stand rejected under 35 U.S.C. 102(b) as being unpatentable over Tunncliffe et al. (US patent No. 6,272,110 B1). Applicants disagree, and submit that the cited reference fails to teach or suggest, at the very least, determining a change in total network capacity to be applied to the network in order to increase or decrease the total capacity of the network.

Tunncliffe et al. discloses a system for allocating existing bandwidth resources to each individual customer through a virtual private network. The system allows the operator to predict the short term future demand of the network. Thus the operator or an automatic process pro-actively reconfigures existing resources to cope with any increase in traffic before services are affected. (Tunncliffe et al., Column 3, lines 32-34; and Column 4, lines 25-29).

The Examiner seems to be equating "increase or decrease the total capacity of the network" in the present application with "reconfiguring [existing] resources" in the cited art. Applicants respectfully disagree and submit that it is unreasonable to make such an equation. Tunncliffe et al. focuses on allocating existing network capacity to each customer and defines an automatic process that reconfigures the existing resources. Moreover, Tunncliffe et al. discloses that extra bandwidth from the existing resources may be sold to the customer if the system is over utilized. (Column 2, lines 18-22). Further, the plain language of the Tunncliffe et al. specification teaches away from the present application. For

example, one exemplary definition of the term "reconfigure" in Tunncliffe et al. corresponds to "To rearrange the elements or settings of". Therefore "reconfiguring resources" pertains to rearranging existing network capacity between various customers based on predicted excess usage in the short term. Tunncliffe et al. does not describe nor suggest adding network capacity to the total network capacity, as claimed in claim 1.

Tunncliffe et al. further teaches away from the limitations of claim 1 by only disclosing reconfiguring resources for each individual customer. For example, Tunncliffe et al. concedes "Because different customers have different priorities and requirements it is difficult to develop a generic method of managing a customer network." Claim 1 of the present application is directed to determining a change in total network capacity.

For at least these reasons, Applicants submit that independent claim 1 is patentable over the cited art. To the extent that independent claims 17 and 32 recite limitations similar to the limitations recited in claim 1, independent claims 17 and 32 are believed to be allowable for at least the same reasons that claim 1 is believed to be allowable.

Claim 4 depends from and further limits claim 1, and is allowable for at least the same reasons that claim 1 is allowable. Applicants request that the rejection of this claim be removed. Claim 4 recites determining a lead time for adding product and increasing the total network capacity. Because Tunncliffe et al. does not teach or suggest increasing the total network capacity, Tunncliffe et al. cannot describe determining a lead time for adding product and increasing the total network capacity. In fact, Tunncliffe et al. does not

even mention anything regarding the determination of a lead time.

Claims 5-16 depend from and further limit claim 1, and are allowable for at least the same reasons that claim 1 is allowable. Applicants request that the rejection of claims 5-16 be removed.

Claims 18-31 depend from and further limit claim 17, and are allowable for at least the same reasons that claim 17 is allowable. Applicants request that the rejection of claims 18-31 be removed.

Claims 33-41 depend from and further limit claim 32, and are allowable for at least the same reasons that claim 32 is allowable. Applicants request that the rejection of claims 33-41 be removed.

For at least these reasons, Applicants submit that claims 1-41 are in condition for allowance.

Due to the complete absence of the limitations from the cited art such as in the independent claims and Claim 4, Applicants submit the finality of any subsequent Office Action would be premature.

### **Conclusion**

Applicants submit that the claims are allowable for at least the reasons set forth herein. Applicants thus respectfully submit that claims 1-41 as presented are in condition for allowance and respectfully request favorable reconsideration of this application.

Although the prior art made of record and not relied upon may be considered pertinent to the disclosure, none of these

references anticipates or makes obvious the recited aspects of the invention. The fact that Applicants may not have specifically traversed any particular assertion by the Office should not be construed as indicating Applicants' agreement therewith.

Respectfully submitted,

/James J. Barta, Jr./

James J. Barta, Jr., Reg. No. 47,409  
ARMSTRONG TEASDALE LLP  
One Metropolitan Square, 26th Floor  
St. Louis, Missouri 63102  
(314) 621-5070

JJB\agb\skb  
Via EFS